

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SCOTT GUNNELLS, an individual,

Plaintiff,

v.

MICHAEL JOSEPH TEUTUL, an individual;
PAUL TEUTUL, an individual; ORANGE
COUNTY CHOPPERS, INC., a New York
Corporation; and DOES 1-10,

Defendants.

Civil Action No.: 1:19-cv-05331-JSR

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:**

- 1. COPYRIGHT INFRINGEMENT**
- 2. VIOLATION OF THE DIGITAL
MILLENNIUM COPYRIGHT ACT
(17 U.S.C §1202)**

JURY TRIAL DEMANDED

Plaintiff Scott Gunnells ("Gunnells" or "Plaintiff"), by his attorneys Doniger / Burroughs, for his complaint against defendants Michael Joseph Teutul, an individual ("Michael Teutul"); Paul Teutul, an individual ("Paul Teutul"); Orange County Choppers, Inc., a New York Corporation ("OCC"); and Does 1-10, alleges as follows:

JURISDICTION AND VENUE

1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et seq.*
2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and 1338 (a) and (b).
3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred.

PARTIES

4. Plaintiff Scott Gunnells is a professional photographer specializing in portraiture, located in Lebanon, Pennsylvania.

5. Plaintiff is informed and believes and thereon alleges that Michael Joseph Teutul is an individual with his primary place of business located at 14 Crossroads Ct, Newburgh, New York 12550, and is the owner of the websites at <https://instagram.com/mikeyteutul1978/>; <https://instagram.com/fockerocc/>; <https://therealmikeyteutul.co>; <https://www.youtube.com/user/MikeyTeutulW>; and <https://orangecountychoppers.com/>.

6. Plaintiff is informed and believes and thereon alleges that Paul Teutul is an individual with his primary place of business located at 14 Crossroads Ct, Newburgh, New York 12550, is the President of Orange County Choppers, Inc., a New York Corporation, and is the owner of the websites at <https://orangecountychoppers.com/> and <https://www.facebook.com/orangecountychoppers/>.

7. Plaintiff is informed and believes and thereon alleges that Orange County Choppers, Inc. is a New York Corporation with its primary place of business located at 14 Crossroads Ct, Newburgh, New York 12550.

8. Plaintiff is informed and believes and thereon alleges that Defendants Does 1 through 10, inclusive, are other parties not yet identified who have infringed Plaintiff's copyrights, have contributed to the infringement of Plaintiff's copyrights, or have engaged in one or more of the wrongful practices alleged herein. The true names, whether corporate, individual or otherwise, of the Does 1-10, inclusive, are presently unknown to Plaintiff, which therefore sues said Does 1-10 by such fictitious names, and will seek leave to amend this Complaint to show their true names and capacities when same have been ascertained.

9. Plaintiff is informed and believes and thereon alleges that at all times relevant hereto each of the Defendants was the agent, affiliate, officer, director, manager, principal, alter-ego, and/or employee of the remaining Defendants and was at all times acting within the scope of such agency, affiliation, alter-ego relationship and/or employment; and actively participated in or subsequently ratified and/or adopted each of the acts or conduct alleged, with full knowledge of all the facts and circumstances, including, but not limited to, full knowledge of each violation of Plaintiff's rights and the damages to Plaintiff proximately caused thereby.

CLAIMS RELATED TO SUBJECT PHOTOGRAPH A

10. Plaintiff Gunnells owns an original photograph entitled “#000003” (“Subject Photograph A”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number V Au 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph A.

11. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph A, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph A without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as Michael Teutul’s Facebook page at <https://www.facebook.com> and on Michael Teutul’s website at <https://therealmikeyteutul.com> to promote the sale of Michael Teutul’s apparel and artwork and to promote Michael Teutul’s promotional appearances.

12. An image of Subject Photograph A and examples of the infringing uses that were discovered approximately on or after October 2017 are set forth hereinbelow:

Subject Photograph A



Exemplar Screen Captures of Infringing Uses



Facebook post by Michael Teutul dated Feb. 18, 2016 (last visited Aug. 30, 2019, available <https://www.facebook.com/WolfGangGallery/photos/a.147519195309881/1046959055365886>)



Facebook post by Michael Teutul dated Dec. 27, 2017



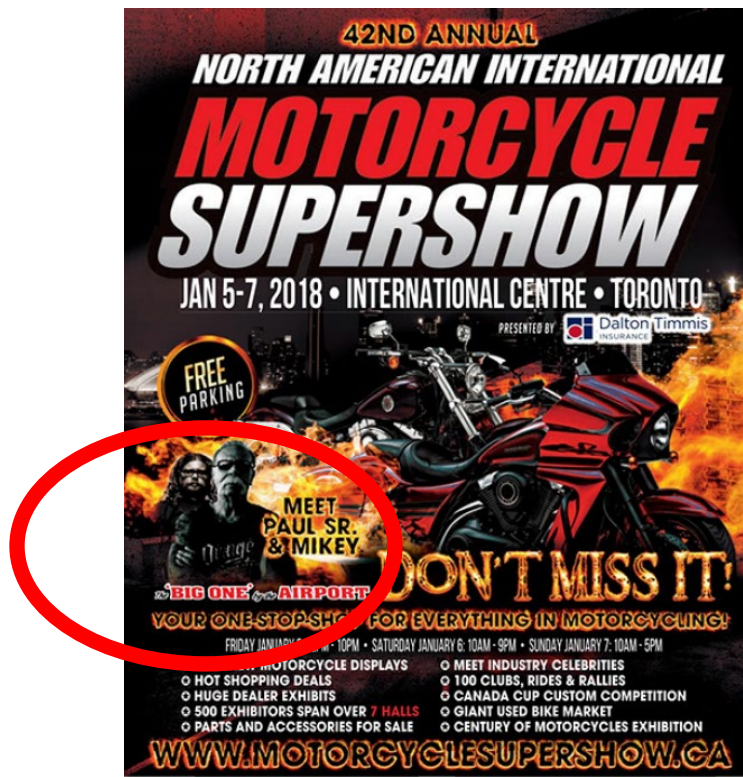
Facebook post by OCC dated Dec. 27, 2017 (last visited Aug. 30, 2019, available <https://www.facebook.com/orangecountychoppers/photos/a.169710133086/10155287611313087/?type=3&theater>)



Cover of ATVWorld Magazine, Volume 14, No. 5, 2017 issue



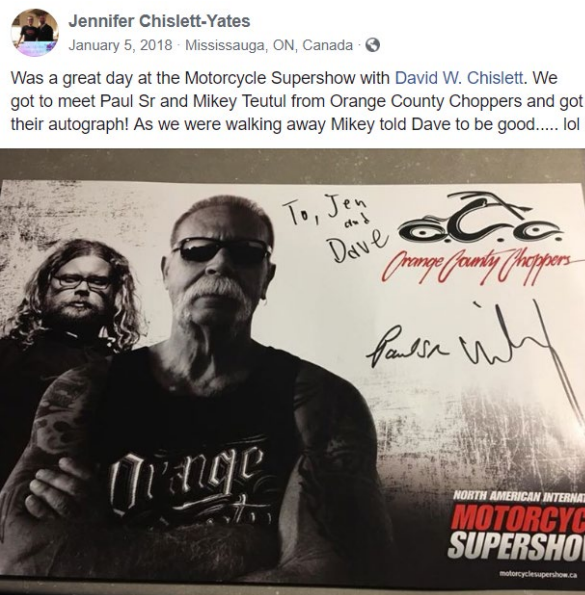
Promotion for North American International Motorcycle Supershow scheduled for Jan. 5-7, 2018 from “ATVWorld Magazine”, Volume 14, No. 5, 2017 issue



Promotion for North American International Motorcycle Supershow scheduled for Jan. 5-7, 2018 from “ATVWorld Magazine”, Volume 14, No. 5, 2017 issue



Advertisement captured by attendee of 42nd Annual North American International Motorcycle Supershow dated Jan. 7, 2018 (last visited Aug. 30, 2019, available <https://www.facebook.com/photo.php?fbid=10155008270936536>)



Poster provided to attendee of the 42nd Annual North American International Motorcycle Supershow dated Jan 5. 2018, (last visited Aug. 30, 2019, available <https://www.facebook.com/photo.php?fbid=10159803102740430>)

CLAIMS RELATED TO SUBJECT PHOTOGRAPH B

13. Plaintiff Gunnells owns an original photograph entitled “#000025” (“Subject Photograph B”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number VAu 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph B.

14. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph B, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph B without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> to promote Michael Teutul’s promotional appearances.

15. An image of Subject Photograph B and an example of the infringing use that was discovered approximately on or after October 2017 are set forth hereinbelow:

Subject Photograph B



Exemplar Screen Captures of Infringing Uses



(Advertisement for Blue Ridge Bike Fest 2013, scheduled for April 12-14, 2013)

CLAIMS RELATED TO SUBJECT PHOTOGRAPH C

16. Plaintiff Gunnells owns an original photograph entitled “#000035” (“Subject Photograph C”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number V Au 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph C.

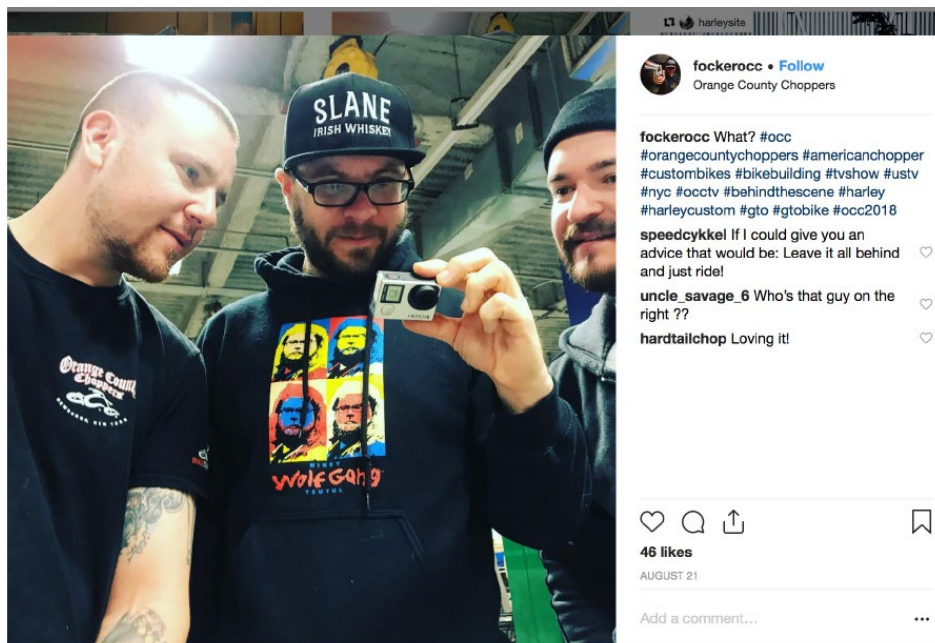
17. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph C, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph C without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the production and sale of apparel featuring a derivative work made from Subject Photograph C, which was published and promoted for sale on websites such as <https://www.instagram.com/>; <https://orangecountychoppers.com/>; <https://therealmikeyteutul.co>; <https://www.ebay.com>; and on the television program “Orange County Choppers”.

18. An image of Subject Photograph C and examples of the infringing uses that were discovered approximately on or after October 2017 are set forth hereinbelow:

Subject Photograph C

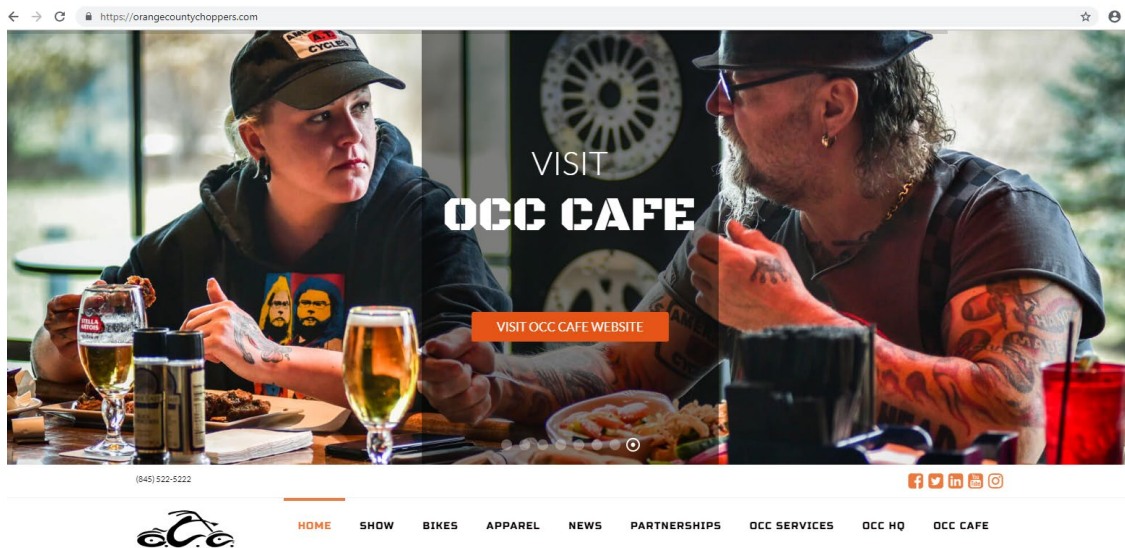


Exemplar Screen Captures of Infringing Uses

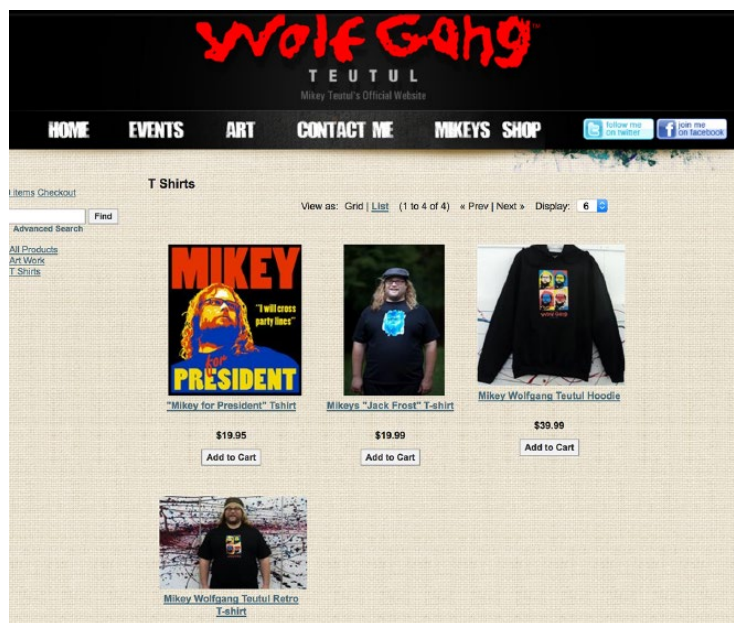


Instagram post by Michael Teutul dated Aug. 21, 2018 (last visited Aug. 30, 2019, available at

<https://www.instagram.com/p/BmvHD1IB06U/?igshid=l6on39dmcpdv>)



Banner image on OCC's website as of Aug. 30, 2019 (last visited Aug. 30, 2019, available at <https://orangecountychoppers.com/>)



CLAIMS RELATED TO SUBJECT PHOTOGRAPH D

19. Plaintiff Gunnells owns an original photograph entitled “#000059” (“Subject Photograph D”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number VAu 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph D.

20. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph D, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph D without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> to promote Michael Teutul’s promotional appearances.

21. An image of Subject Photograph D and screen capture of Michael Teutul’s website with Subject Photograph D embedded that was discovered approximately on or after October 2017 is set forth hereinbelow:

Subject Photograph D



Exemplar Screen Captures of Infringing Uses**CLAIMS RELATED TO SUBJECT PHOTOGRAPH E**

22. Plaintiff Gunnells owns an original photograph entitled “#000221” (“Subject Photograph E”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number VAu 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph E.

23. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph E, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph E without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> to promote Michael Teutul’s exhibitions of artwork.

24. An image of Subject Photograph E and a screen capture of the infringing use that was discovered approximately on or after October 2017 are set forth hereinbelow:

Subject Photograph E



Exemplar Screen Capture of Infringing Uses



Mikey Teutul's "Wolfgang" Gallery
July 23, 2012

Like Page

Mike's NYC exhibit is ready for viewing! Here is the poster compliments of Omar!
Thanks!

CLAIMS RELATED TO SUBJECT PHOTOGRAPH F

25. Plaintiff Gunnells owns an original photograph entitled “#000222” (“Subject Photograph F”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number VAu 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph F.

26. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph F, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph F without Plaintiff's authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> to promote Michael Teutul's exhibitions of artwork.

27. An image of Subject Photograph F and a screen capture of an infringing use that was discovered approximately on or after October 2017 is set forth hereinbelow:

Subject Photograph F



Exemplar Screen Captures of Infringing Uses



CLAIMS RELATED TO SUBJECT PHOTOGRAPH G

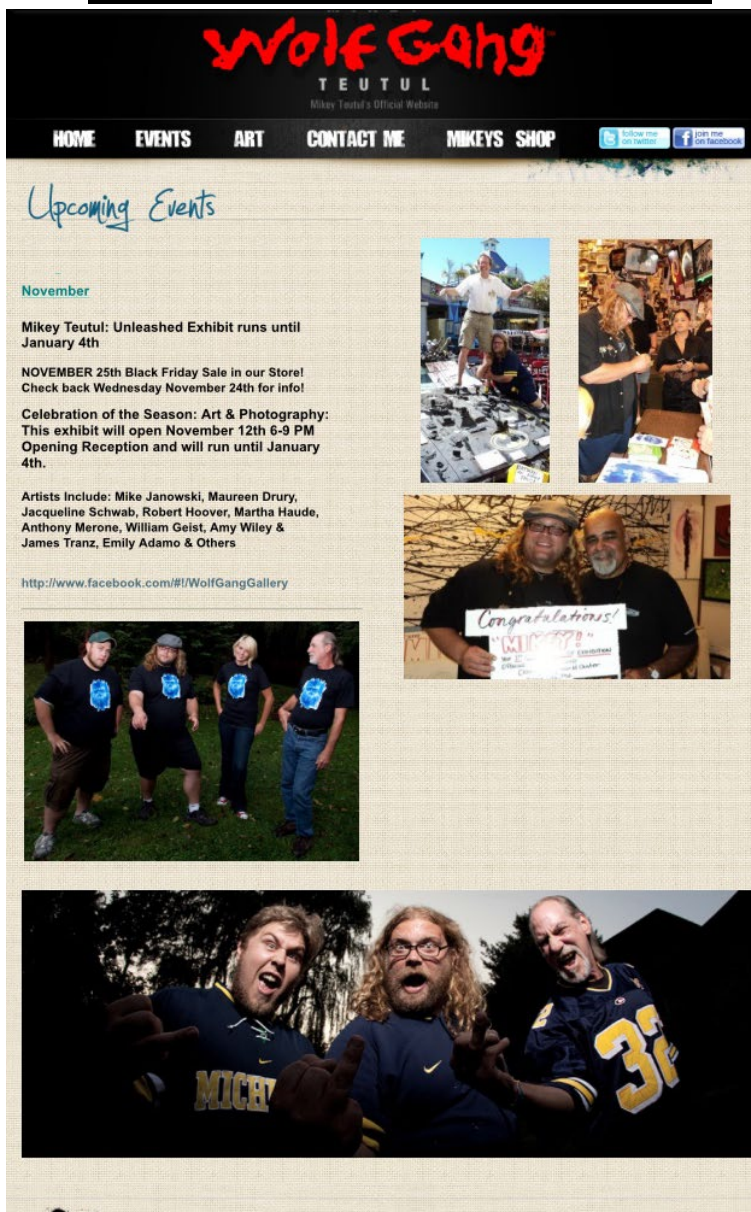
28. Plaintiff Gunnells owns an original photograph entitled “#000008” (“Subject Photograph G”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number VAu 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph G.

29. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph G, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph G without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> and/or <https://therealmikeyteutul.com/> to promote Michael Teutul’s exhibitions of artwork.

30. An image of Subject Photograph G and a screen capture of an infringing use that was discovered approximately on or after October 2017 is set forth hereinbelow:



Exemplar Screen Captures of Infringing Uses



CLAIMS RELATED TO SUBJECT PHOTOGRAPH H

31. Plaintiff Gunnells owns an original photograph entitled “#000010” (“Subject Photograph H”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number V Au 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph H.

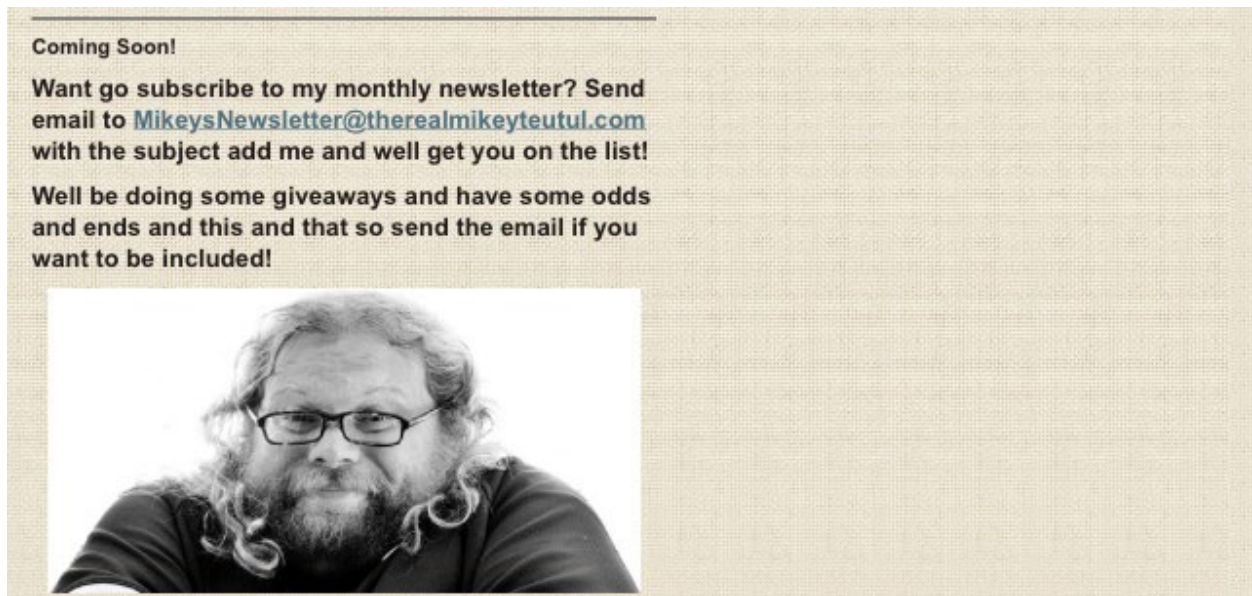
32. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph H, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph H without Plaintiff's authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> and/or <https://therealmikeyteutul.com/> to promote Michael Teutul's exhibitions of artwork.

33. An image of Subject Photograph H and a screen capture of an infringing use that was discovered approximately on or after October 2017 is set forth hereinbelow:

Subject Photograph H



Exemplar Screen Captures of Infringing Uses



CLAIMS RELATED TO SUBJECT PHOTOGRAPH I

34. Plaintiff Gunnells owns an original photograph entitled “#000023” (“Subject Photograph I”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number VAu 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph I.

35. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph I, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph I without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> and/or <https://therealmikeyteutul.com/> to promote Michael Teutul’s exhibitions of artwork.

36. An image of Subject Photograph I and a screen capture of an infringing use that was discovered approximately on or after October 2017 is set forth hereinbelow:

Subject Photograph I



Exemplar Screen Captures of Infringing Uses



CLAIMS RELATED TO SUBJECT PHOTOGRAPH J

37. Plaintiff Gunnells owns an original photograph entitled “#000026” (“Subject Photograph J”) that was registered with the United States Copyright Office on January 18, 2013 with the Registration Number V Au 1-130-673. Plaintiff is the sole owner of the exclusive rights in Subject Photograph J.

38. Plaintiff is informed and believes and thereon alleges that following its publication and display of Subject Photograph J, Michael Teutul; Paul Teutul; OCC; Doe Defendants, and each of them used Subject Photograph J without Plaintiff’s authorization for commercial purposes in various ways, including, but not limited to, the use on websites such as <https://www.facebook.com> and/or <https://therealmikeyteutul.com/> to promote Michael Teutul’s exhibitions of artwork.

39. An image of Subject Photograph J and a screen capture of an infringing use that was discovered approximately on or after October 2017 is set forth hereinbelow:

Subject Photograph J



Exemplar Screen Captures of Infringing Uses



FIRST CLAIM FOR RELIEF

(Copyright Infringement - Against All Defendants)

40. Plaintiff repeats, realleges and incorporates herein by reference as though fully set forth the allegations contained in the preceding paragraphs of this Complaint.

41. Plaintiff is informed and believes and thereon alleges that Defendants had access to Subject Photograph A; Subject Photograph B; Subject Photograph C; Subject Photograph D; Subject Photograph E; Subject Photograph F; Subject Photograph G; Subject Photograph H; Subject Photograph I; and Subject Photograph J (collectively, the “Subject Photographs”), including, without limitation, through Plaintiff’s website and social media accounts or viewing the Subject Photographs on third-party websites (e.g., Tumblr, Pinterest, etc.).

42. Plaintiff is informed and believes and thereon alleges that Defendants used and distributed images of the Subject Photographs, and exploited said images in website posts without Plaintiff’s authorization or consent.

43. Plaintiff is informed and believes that in the three years prior to the filing of the complaint in this action, Defendants, and each of them, exploited one or more of the Subject Photographs on multiple occasions, including without limitation, by publishing them online, creating physical copies of the Subject Photographs, distributing and selling said copies, and otherwise exploiting the Subject Photographs.

44. Plaintiff discovered the infringing acts at issue within three years of the filing of this complaint.

45. Due to Defendants’ acts of infringement, Plaintiff has suffered damages in an amount to be established at trial.

46. Due to Defendants’ acts of copyright infringement as alleged herein, Defendants have obtained profits they would not otherwise have realized but for their infringement of the Subject Photographs. As such, Plaintiff is entitled to disgorgement of Defendants’ profits attributable to the infringement of the Subject Photographs in an amount to be established at trial.

47. Plaintiff is informed and believes and thereon alleges that Defendants committed copyright infringement with actual or constructive knowledge of Plaintiff's rights, or reckless disregard for the same, such that said acts of copyright infringement were, and continue to be, willful, intentional and malicious. Plaintiff reserves the right to seek statutory damages.

SECOND CLAIM FOR RELIEF

(For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 – Against all Defendants, and Each))

48. Plaintiff repeats, re-alleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

49. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, violated 17 U.S.C. §1202(b) by intentionally removing and/or altering its copyright management information when engaging in the Infringing Use of the Subject Photographs and doing so without authority of the copyright owner or the law, and publishing the Subject Photographs and falsely designating authorship of same under their own names, knowing that copyright management information had been removed or altered without authority of the copyright owner or the law, and knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that the conduct would induce, enable, facilitate, or conceal an infringement of any right under this title.

50. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, removed, or conspired to remove, his identification information, including without limitation in the form of his "NYLA" and name designations, from the above-mentioned works before publishing them without consent under their own names.

51. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly removed and altered the copyright management information of the Subject Photograph upon publication of the Infringing Use.

52. The above conduct is in violation of the Digital Millennium Copyright Act and exposes Defendants, and each of them, to additional and enhanced common law and statutory damages and penalties pursuant to 17 USC § 1203 and other applicable law.

53. Plaintiff is informed and believes and thereon alleges that Defendants, and each of their, conduct as alleged herein was willful, reckless, and/or with knowledge, and Plaintiff resultantly seeks enhanced damage and penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. That Defendants and their respective agents and servants be enjoined from distributing, reproducing or displaying the Subject Photographs in violation of their copyrights;
- b. That Plaintiff be awarded all profits of Defendants, plus all losses of Plaintiff, the exact sum to be proven at the time of trial, or, if elected before final judgment on any claim for which there is timely registration, statutory damages as available under the Copyright Act, 17 U.S.C. § 504;
- c. That Plaintiff be awarded its attorneys' fees as available under the Copyright Act U.S.C. §§ 505 and 1203 on each claim for which there is timely registration;
- d. That Plaintiff be awarded pre-judgment interest as allowed by law;
- e. That Plaintiff be awarded the costs of this action; and
- f. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this action of all issues so triable.

Dated: Brooklyn, New York
August 30, 2019

Respectfully Submitted,

By: /s/ Scott Alan Burroughs
Scott Alan Burroughs
Laura M. Zaharia
scott@donigerlawfirm.com
lzaharia@donigerlawfirm.com

231 Norman Avenue, Suite 413
Brooklyn, New York 11222
(310) 590-1820

Attorneys for Plaintiff Scott Gunnells